IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. ——.

IN THE MATTER OF

MRS. DAVID A. BUCKLEY, *Petitioner,*

—against—

J. YANCEY CHRISTMAS, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Your petitioner, MRS. DAVID A. BUCKLEY, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit, entered on July 22, 1941, affirming a judgment of the District Court for the District of Maryland for $4,764.90, rendered in favor of the respondent and against your petitioner in an action brought on an open account.

SUMMARY STATEMENT OF MATTER INVOLVED.

FACTS.

The petitioner, the owner of a farm devoted to the breeding of race horses, placed with respondent a number of her horses to be trained and prepared by him for racing at the various eastern race tracks (R. 223). The respondent brought an action against your petitioner in the Superior Court of Baltimore City, which was removed by petitioner to the United States District Court for the District of Maryland (R. 2). Respondent's action was based upon an open account amounting to $4,988.90, for services rendered and expenses incurred by him as trainer of petitioner's race horses. Petitioner in her answer denied being indebted to respondent and set up five counterclaims, the aggregate of which exceeded respondent's aforesaid claim (R. 4). The District Court, without a jury, disallowed all of petitioner's counterclaims, and rendered judgment allowing respondent's claim as stated, less the sum of $224.00 (R. 214).

Petitioner's first counterclaim alleged respondent's indebtedness to her in the sum of $1,500.00 arising from the sale by her and the purchase by respondent of the mare "Cleaning Time" (R. 4).

In rejecting this counterclaim the District Judge held that there was no agreement of sale for $1,500.00, but that the mare was in the possession of respondent, under an "on the cuff" arrangement, which permitted the respondent to pay for said mare out of earnings and purses won in races in which she ran. The District Court, as stated, rendered a money judgment in favor of respondent, but made no provision therein respecting said mare, the property of your petitioner (R. 213).

The Circuit Court of Appeals, in reviewing the District Court's action on this counterclaim, expressed "no opinion as to the present or future rights and liabilities of the parties to this suit with respect to the mare 'Cleaning Time' ", stating also that the respondent had not shown that his possession was a "gift" or "bailment so that he could con-

tinue to train and race her or for any other purpose" (R. 225).

In dismissing petitioner's third counterclaim, involving a charge of $1,500.00 for three services of petitioner's stallion "Grand Time" to respondent's mare plus the sum of $25.00 for transportation expenses, the District Judge allowed in evidence over your petitioner's objections and exceptions, a written agreement (Exhibit 5) relating to said stud services alleged to have been made with her agent (R. p. 191) the authority to make, or the actual existence, of such agreement having been denied by petitioner (R. p. 207).

In admitting said Exhibit 5, the District Court, upon the ground that a written instrument could not be varied by a verbal agreement, rejected petitioner's evidence of a verbal agreement requiring respondent to pay $500.00 for each service rendered (R. p. 207).

The respondent testified that it was understood between the parties at the time of the sale of the stallion "Grand Time" he was to have free service of the stallion (R. p. 207).

The Circuit Court of Appeals found that said written agreement (Exhibit 5) was inadmissible, holding, nevertheless, that a dismissal of this counterclaim was not erroneous under Rule 52(a) of the Rules of Civil Procedure (R. p. 226).

QUESTIONS PRESENTED.

(1) Where in an action on an open account for moneys due plaintiff, as a trainer of horses, a counterclaim interposed by the defendant, the owner of the horses, alleging in reduction of the trainer's claim the sale of a mare, is dismissed for failure to prove such sale and the plaintiff is sustained in his claim that the mare was to be paid for out of her earnings, is a judgment awarded to plaintiff which does not make provision for the satisfaction of the future training expenses and the payment of the mare out of her

winnings, or in lieu thereof, provide for its return or the payment of its reasonable value, a proper judgment?

(2) Did the Circuit Court of Appeals in recognizing that the possession of the horse, which was the subject matter of the counterclaim, was not a gift nor a bailment for the purpose of training her "or for any other purpose", err in holding that the property, the horse in question, was not a matter for decision by the District Court?

(3) Where the Circuit Court of Appeals holds a written agreement inadmissable and the District Court in erroneously admitting such written agreement, refuses to consider petitioner's evidence of an independent verbal agreement based on the District Court's misapplication of the rule of law that oral testimony of an independent agreement may not be used to vary the express terms of a written agreement, and where the Circuit Court of Appeals sustains the findings of fact and conclusions of law of the District Court, by reason of an independent verbal agreement, testified to by the respondent, but fails to consider petitioner's version of said verbal agreement because of the erroneous exclusion of such evidence by the District Court, as aforesaid, is Rule 52(a) of the Federal Rules of Civil Procedure properly applied by the Circuit Court of Appeals, and is its decision correct that such findings of fact and conclusions of law were not "clearly erroneous" within the meaning of said Rule 52(a), notwithstanding such errors relate to matters of law?

(4) Do the matters raised in Question "3", above, by reason of the failure of the District Court and the Circuit Court of Appeals to consider petitioner's evidence, due to a mistake in law, constitute a denial of due process?

REASONS FOR GRANTING THE WRIT.

The question of a judgment in conformity with the issues raised in a judicial proceeding, is an important question and involves a denial of due process.

The question here of a proper judgment is substantial since it relates to counterclaims where property rights are put in issue.

The decision of the Circuit Court of Appeals raises two issues affecting the function and purpose of counterclaims in judicial proceedings.

(a) The counterclaim is substantially a cross action by defendant against plaintiff, and gives defendant the full relief accorded by a separate action. Although the pleadings and trial in the instant case placed in issue the ownership of the mare, "Cleaning Time", for the purpose of reducing respondent's claim, and petitioner's ownership was affirmed therein, the judgment entered herein fails to make provision in protection of such ownership.

The ruling of the Circuit Court of Appeals leaves suspended the present and future property rights of your petitioner although it requires her to pay in accordance with the judgment rendered the amount recovered by respondent.

(b) Under the decision of the Circuit Court of Appeals, in view of the issues of ownership, sale, possession and custody of the mare, "Cleaning Time", involved in the trial had in the District Court, the remedy of an independent and second action, which said decision intimates, sanctions a practice of multiplicity of actions in defeat of the purposes and objects of counterclaims, and jeopardizes petitioner's assertion of her property rights through judicial proceedings in a single action, in contravention of the Fifth Amendment.

Other grounds for granting certiorari herein are furnished by the holding of the Circuit Court of Appeals, that notwithstanding error found in the admission of a written agreement made with petitioner's alleged agent, such error did not require a reversal of the judgment, but that the judgment could be affirmed under Rule 52(a) of the Federal Rules of Civil Procedure, where the facts found by the Trial Judge indicate another verbal agreement made with the principal (petitioner), although in arriving at such finding

he weighed and considered said written agreement, and upon the ground that an independent agreement cannot be used to vary the terms of a written agreement, refused to consider petitioner's version of said verbal agreement. Accordingly, here also, there is raised an important question involving a denial of due process.

WHEREFORE, it is respectfully submitted that this petition should be granted.

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Attorney for Petitioner.

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JACOB H. GILBERT,
Of Counsel.